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MEMORANDUM

NATIONAL SECURITY COUNCIL

July 23, 1975

DOJ REVIEWED 17-Mar-2011: UNCLASSIFIED

NO OBJECTION TO RELEASE

MEMORANDUM FOR: GENERAL SCOWCROFT
FROM: Jeanne W. Davis *JWD*
SUBJECT: Draft Affidavit in Nixon v.
Sampson, et al

I have been asked by the Justice Department for an affidavit for use in the action filed by former President Nixon for recovery of his Presidential papers. The purpose is to describe the NSC institutional and Presidential files and outline the degree and nature of our access to Nixon material. I have discussed the affidavit informally with Bill Casselman and the Justice Department attorneys and the draft at Tab A is the result.

Justice is anxious to file the affidavit this week and would appreciate early approval.

RECOMMENDATION:

That you approve the draft affidavit at Tab A.

Approve _____

As amended *[Signature]*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD NIXON, individually
and as the former President
of the United States,

Plaintiff,

v.

ADMINISTRATOR OF GENERAL SERVICES)

and

THE UNITED STATES OF AMERICA,

Defendants.)

CIVIL ACTION NO.

74-1852

AFFIDAVIT OF JEANNE W. DAVIS

1. I, Jeanne W. Davis, am the Staff Secretary of the National Security Counsel (hereinafter "NSC"). I have held this position since June, 1970. My responsibilities include the review of the work of NSC Staff members for general responsiveness to the requirements of the President and his Assistant for National Security Affairs, including organization, presentation, format and proper coordination. I also serve as the principle point of contact on NSC matters for the Offices of the NSC members and other Executive Departments. My office circulates papers for meetings of the NSC and its sub-groups, records the actions of the NSC and the decisions of the President on national security policy questions and helps insure that the officials concerned are informed of the workings of the NSC and the decisions of the President. I have overall responsibility for the assignment of action on the staff, the control of action and information documents to the President or Mr. Kissinger and the maintenance of the official NSC files.

foreign and military policies relating to the national security. (Pub. L. 253, Title 1, Section 101, 80th Congress, approved July 26, 1947, as amended by Section 307 Pub. L. 165, 82nd Congress, approved October 10, 1951. By reorganization Plan No. 4, effective August 20, 1949, the Council was placed in the Executive Office of the President. ^{50 U.S.C. 402} Subject to the direction of the President, it is the responsibility of the NSC to assess and appraise the objectives, commitments and risks of the United States in relation to actual and potential military power, to consider policy on matters of common interest to the departments and agencies of the government, and to make such recommendations and such other reports to the President as it deems appropriate or as the President may require. As an advisory body to the President, the NSC's organization has been shaped to meet needs of individual Presidents and to be compatible with their methods of work. At the present time, the NSC is the principal forum through which major issues of national security policy are identified, analyzed and brought to the President for decision. The NSC itself is not a decision-making body.

3. In 1953, when President Eisenhower appointed Mr. Robert Cutler as his special Assistant for Security Affairs, he announced that this official would also be the principle Executive Officer of the NSC. This practice has been continued by each succeeding President. During the administrations of Presidents Johnson and Kennedy, much of the formal structure of the NSC was not used and the NSC in essence became an extension of the White House staff. In 1969 President Nixon revitalized the machinery of the NSC and President Ford has affirmed a commitment to maintain the NSC as the formal structure for foreign policy decision making. Under Presidents Nixon and Ford,

the Assistant for National Security Affairs (Mr. Kissinger)

has served in both the role of chief supervisory officer of the NSC system and the role of Advisor to the President. The NSC staff members have supported Mr. Kissinger, as Assistant to the President, in both capacities.

4. Material generated by the NSC is separated into two types of files. The first we refer to as "institutional files" and the second as non-institutional files.

5. The institutional files of the NSC contain all National Security Study Memoranda and Decision Memoranda and all reports and recommendations prepared for the Council. These files also include minutes of NSC and sub-group meetings, briefing papers, and material related to NSC organizations. The current files are maintained in my office or by the Secretariat in an alarmed vault in NSC offices in the OEOB. Older institutional files are stored in classified depositories outside Washington, D. C. In addition, the NSC staff files contain

other records, such as correspondence concerning Freedom of Information requests and NSC staff correspondence with the public. The NSC administrative files contain primarily personnel records. As files of a statutory body, the NSC institutional files serve to preserve continuity in the decision-making process in the area of national security.

These files have always been retained by NSC from Administration to Administration and these are available to subsequent Presidents for these purposes.

6. Non-institutional files are also maintained by NSC staff. They include the following types of records: briefing material for presidential meetings, records of negotiations with foreign governments, correspondence with foreign heads of state and government, correspondence -- including presidential directives -- with agencies in the Executive Branch on matters concerning foreign affairs but

not considered part of the NSC institutional process, and various other types of classified correspondence on matters of foreign policy interest. The information contained in these files is staffed and prepared in NSC staff offices and is processed through the NSC Secretariat. When an action is completed, the NSC Secretariat forwards the set of papers involved to a secure document receiving area, operated by NSC Staff in the White House (neither in Central Files nor Special Files). There the records are maintained for access by the President, the Assistant to the President for National Security Affairs and his staff. These files, although maintained and accessible to NSC staff personnel, are considered by NSC to be presidential files and have in the past been boxed and removed by presidents when an administration changes.

7. Other non-institutional files includes materials which relate to foreign affairs, but which are filed in White House Central Files. These files are also processed for the President through and by the NSC Staff. These files include official presidential documents, congressional and public correspondence, legislative documents, speech material, and unclassified, non-substantive records. These are maintained by White House personnel on the ground floor of the Old Executive Office Building and are treated by a departing president the same as other presidential materials. Such documents have been available in the White House for NSC reference purposes during the life span of a particular administration, and afterwards, at the appropriate presidential library.

8. These non-institutional files are not available in the White House to succeeding presidents because past

presidents have customarily removed such presidential materials as they have departed from office. Succeeding presidents, their staffs and NSC staff acting on their behalf, are able to have access to these foreign policy documents of previous administrations through the various presidential libraries which have been established after the president has left office. During President Nixon's term, as in other administrations, the NSC staff had occasion to use the non-institutional foreign policy documents of previous administrations.

9. In general, there is no overlap between the NSC files and the White House files maintained by NSC staff personnel. The only exception concerns NSC institutional documents which, in addition to being maintained in the NSC files, are also included in Presidential files stored in the White House. Copies of non-institutional documents are not maintained by the NSC as permanent records.

10. In carrying out current Government business it has been necessary to review certain papers of the Nixon Administration which are maintained in the vault in room 207 of the Old Executive Office Building. These papers have included records of negotiations and Presidential and other high-level correspondence with foreign officials. Some specific illustrations of the on-going need for Nixon Administration material follow.

11. President Ford will be traveling in the near future to the People's Republic of China. In preparation for his meeting with leaders of the People's Republic, the President will need to be briefed on the negotiations with these leaders conducted by President Nixon during his visit there in 1972 and by Mr. Kissinger, his Assistant for National Security Affairs, which took place both before and after

Mr. Nixon's visit. The basis for much of our China policy is contained in the papers of the Nixon Administration which are non-institutional and therefore not part of the permanent institutional records retained by the NSC. Without the ability of review our past understandings with the Chinese, as reflected in these documents, the President would be inadequately prepared for his forthcoming meetings with the PRC officials.

12. The United States has continued its efforts with the parties to the Arab-Israeli dispute in an attempt to resolve outstanding differences and bring about a lasting peace in the Middle East. The negotiating positions of all parties have substantially changed many times. It is essential that we be able to review the records in order to trace the development of a particular negotiating position if we are to play a mediating role. Without ready access to the Nixon Administration material, of which the basic negotiating papers are a part, our effectiveness would be seriously diminished.

13. Until recently we had frequent occasion to review material relating to Vietnam, in particular the negotiations which led to the 1973 Paris Peace Agreement. In addition, Congressional and media inquiries as to commitments which may have been contained in exchanges between Presidents Nixon and Thieu required a thorough review of this material to determine the truth of the allegations. Without ready access to these papers the response would have been based only on recollections and the assurances of others and could not be adequately supported with written documents.

14. Our on-going Strategic Arms Limitations Talks (SALT) with the Soviet Union began during the early years

of the Nixon Administration. M different positions

have been discussed and various agreements have been signed. We simply could not continue these most significant negotiations without access to an official record of previous agreements and negotiating positions.

15. It would, of course, be possible to continue to operate without access to the material filed in room 207, OEOB, if we could keep working copies of the documents. Indeed, we have retained copies of a limited number of those documents most often required in the White House office of the Assistant to the President. We have, however, kept this practice to a minimum and are not in a position to anticipate future needs with regard to access to the Nixon material.

16. In addition to reviewing these papers for the purposes of on-going Government business, we have also been required to review the original documents to determine whether they are properly classified and properly marked with the classification and exemption categories, pursuant to Executive Order 11652. When we have discovered documents which are not correctly classified or marked, we have added the requisite information so that the documents will conform to the appropriate classification requirements. This has been done to assist the future custodians of these documents who will be called upon to respond to requests for the declassification and release of these records.

JEANNE W. DAVIS

Subscribed and sworn to before me
this _____ day of _____, 1975.

Notary Public

My Commission expires:

DRAFT AFFIDAVIT

I, Jeanne W. Davis, am the Staff Secretary of the National Security Council.

My responsibilities include the review of the work of NSC Staff members for general responsiveness to the requirements of the President and his Assistant for National Security Affairs, including organization, presentation, format and proper coordination. I also serve as the principle point of contact on NSC matters for the Offices of the NSC members and other Executive Departments. My office circulates papers for meetings of the NSC and its sub-groups, records the actions of the Council and the decisions of the President on national security policy questions and helps insure that the officials concerned are informed of the workings of the Council and the decisions of the President. I have overall responsibility for the assignment of action on the Staff, the control of action and information documents to the President or Mr. Kissinger, and the maintenance of the official NSC files.

The statutory function of the Council is to advise the President with respect to the integration of domestic, foreign and military policies relating to the national security. Subject to the direction by the President, it is the responsibility of the Council to assess and appraise the objectives, commitments and risks of the United States in relation to actual and potential military power, to consider policy on matters of common interest to the departments and agencies of the Government, and to make such recommendations and such other reports to the President as it deems appropriate or as the President may require.

As an advisory body to the President, the Council's organization has been shaped to meet needs of individual Presidents and to be compatible with their methods of work. At the present time, the Council is the principle forum through which major issues of national security policy are identified, analyzed and brought to the President for decision. The Council itself is not a decision-making body.

In 1953, when President Eisenhower appointed Mr. Robert Cutler as his special Assistant for Security Affairs, he announced that this official would also be the principle Executive Officer of the NSC. This practice has been continued by each succeeding President. During the administrations of Presidents Johnson and Kennedy much of the formal structure of the NSC was not used and the NSC in essence became an extension of the White House Staff. In 1969 President Nixon revitalized the machinery of the NSC and President Ford has affirmed a commitment to maintain the NSC as the formal structure for foreign policy decision making. Under Presidents Nixon and Ford the Assistant for National Security Affairs (Mr. Kissinger) has served in both the institutional role of chief supervisory officer of the NSC system and the non-institutional role of Advisor to the President. The NSC Staff members have supported the Assistant to the President in both capacities.

Study Memoranda and Decision Memoranda and all reports and recommendations prepared for the Council. These files also include minutes of NSC and sub-group meetings, briefing papers, and material related to NSC organizations. These files are maintained in my office or by the Secretariat in an alarmed vault on NSC premises.

In addition, the NSC Staff files contain records such as correspondence concerning Freedom of Information requests and NSC staff correspondence with the public. The NSC administrative files contain primarily personnel records.

As files of a statutory body, the National Security Council institutional files serve to preserve continuity in the decision-making process in the area of national security. These files are always available to subsequent Presidents. Non-institutional materials, on the other hand, are not available to succeeding Presidents because Presidents have customarily removed their White House files as they have departed from office. Succeeding Presidents are, however, able to access the foreign policy documents of previous administrations through the various Presidential libraries, depending on the terms of the instrument which transferred the material to the libraries.

PRESIDENTIAL FILES

In addition to the NSC institutional files I have just described, the NSC staff also maintains a set of files which do not relate to the institutional functions of the NSC. They include the following types of records: briefing material for Presidential meetings, records of negotiations with foreign governments, correspondence with foreign heads of state and government, correspondence -- including Presidential directives -- with agencies in the Executive Branch on matters concerning foreign affairs but not considered part of the NSC institutional process, and various other types of classified correspondence on matters of foreign policy interest.

The information contained in these files is staffed and prepared in NSC Staff offices and is processed through the NSC Secretariat. When an action is completed and the set of papers may be retired, the NSC Secretariat forwards them to a secure document receiving area in the White House. There the records are maintained for access by the President, the Assistant to the President for National Security Affairs and his staff. These files, although maintained and accessible by NSC Staff personnel, are Presidential files and have in the past been boxed and removed by Presidents when an administration changes.

Central Files are also processed for the President through and by the NSC staff. These files include official Presidential documents, Congressional and public correspondence, legislative documents, speech material, and unclassified, non-substantive records. These are maintained by White House personnel on the ground floor of the Old Executive Office Building and removed by departing President at a change of administration. They are, however, available for NSC reference purposes during the life span of a particular administration.

In general, there is no overlap between the NSC files and the White House files maintained by NSC staff personnel. The only exception concerns NSC institutional documents which, in addition to being maintained in the NSC files, are also included in Presidential files stored in the White House. Copies of non-institutional documents are not maintained by the NSC as permanent records.

Access to Nixon Material

In carrying out current Government business it has been necessary to review certain papers of the Nixon Administration which are maintained in the vault in room 207 of the Old Executive Office Building. These papers have included records of negotiations and Presidential and other high-level correspondence with foreign officials.

Some specific illustrations of the on going need for Nixon Administration material follow:

1. The President

Republic of China. In preparation for his meeting with PRC leaders the President will need to be briefed on the negotiations with these leaders conducted by President Nixon during his visit there and by his Assistant for National Security Affairs, both before and after the President's visit. The basis for much of our China policy is contained in these papers. Without the ability to review our past understandings with the Chinese, the President would be inadequately prepared for his forthcoming meetings with the PRC officials.

2. The United States has continued its efforts with the parties to the Arab-Israeli dispute in an attempt to resolve outstanding differences and bring about a lasting peace in the Middle East. The negotiating positions of all parties have substantially changed many times. It is essential that we be able to review the records in order to trace the development of a particular negotiating position if we are to play a mediating role. Without ready access to the Nixon Administration material, of which the basic negotiating papers are a part, our effectiveness would be seriously diminished.

3. Until recently we had frequent occasion to review material relating to Vietnam, in particular the negotiations which led to the 1973 Paris Peace Agreement. In addition, Congressional and media inquiries as to commitments which may have been contained in exchanges between Presidents Nixon and

Thieu required a thorough review of this material to determine the truth of the allegations. Without ready access to these papers the response would have been based on recollections and the assurances of others.

4. Our on-going Strategic Arms Limitations Talks (SALT) with the Soviet Union began during the early years of the Nixon Administration. Many different positions have been discussed and various agreements have been signed. We simply could not continue these most significant negotiations without access to an official record of previous agreements and negotiating positions.

It would, of course, be possible to continue to operate without access to the material filed in room 207, OEOB, if we could keep working copies of the documents. Indeed, we have retained copies of a limited number of those documents most often required in the White House office of the Assistant to the President. We have, however, kept this practice to a minimum and are not in a position to anticipate future needs with regard to access to the Nixon material.

In addition to reviewing these papers for the purposes of on-going Government business, we have also been required to review the original documents to determine whether they are properly classified and properly marked with the classification and exemption categories, pursuant to Executive Order 11652.

When we have discovered documents which are not correctly classified or marked,

we have added the requisite information so that the documents will conform to
No Objection To Declassification in Full 2011/04/28 : LOC-HAK-77-4-4-8
the appropriate classification requirements. This has been done to assist the
future custodians of these documents who will be called upon to respond to
requests for the declassification and release of these records.

July 22, 1975